



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUN 9 1997

Mr. Alvin A. Smith, Senior Vice President
Getty Petroleum Corporation
and Aero Oil Company
125 Jericho Turnpike
Jericho, NY 11753

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Re: File No. AED/MSEB - 4708

NOTICE OF VIOLATION OF THE CLEAN AIR ACT AND
REQUEST FOR INFORMATION PURSUANT TO SECTION 114 OF THE
CLEAN AIR ACT

Dear Mr. Smith:

On August 24, 1996, an approved U.S. Environmental Protection Agency ("EPA") compliance survey was conducted at Woodie's Service Center ("Woodie's"), a gasoline retail outlet, located at 1101 Revolution Street, Havre de Grace, Maryland 21078. EPA also conducted a follow-up investigation at Getty Petroleum Corporation's Aero Oil Company ("Getty/Aero"), located at 230 Lincoln Way East, New Oxford, PA. The survey and follow-up investigation were conducted to determine compliance with section 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(k), and the regulations issued thereunder (40 C.F.R. Part 80, subpart D). Where inappropriate fuels are used in internal combustion engines, the emissions of harmful gases can increase significantly. Notwithstanding improvements in vehicle emission controls, emissions from motor vehicles continue to make up a very large portion of all air pollution. Congress has established a program of improvement and regulation of fuels to protect our air quality from unnecessary pollution associated with the misfueling of vehicles.

The applicable regulations provide that no person may manufacture and sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline represented as reformulated and intended for sale or use in any covered area (i) unless such gasoline meets the applicable standards specified in 40 C.F.R. § 80.41; (ii) unless the product transfer documentation for such gasoline complies with the requirements in § 80.77; and, (iii) during May 1 through



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September 15, unless each gallon of such gasoline is VOC - controlled for the proper VOC control Region. This law also subjects violators to a maximum civil penalty of \$25,000 per day for each violation in addition to recovery of the amount of the economic benefit or savings resulting from the violation.

As a result of the inspection and follow-up investigation, EPA has determined that Woodie's, which is located in the VOC-Control Region 1 covered area, was selling, dispensing, or offering for sale gasoline represented to be reformulated whose Rvp exceeded the 7.4 psi standard. The sample of gasoline taken from the retail outlet had a Rvp of 7.89 psi. EPA also determined that Getty/Aero was the sole supplier of gasoline to Woodie's and had supplied thirty-eight (38) loads VOC Control Region 2 reformulated gasoline to Woodie's from May 1 through September 15, 1996. EPA further determined that during June through August 1996 Getty/Aero supplied five (5) loads of VOC Control Region 2 reformulated gasoline to the Hess Store, located at 3209 Jarrettsville Pike, Monkton, MD, a VOC-Control Region 1 covered area. Where the gasoline contained in any storage tank at any retail outlet is found in violation, 40 C.F.R. 80.79(a)(3) states that the distributor shall be deemed in violation. As the distributor who sold, supplied, and transported forty-three (43) loads of gasoline to Woodie's and the Hess Store that exceeded the 7.4 Rvp standard, Getty/Aero is liable for the violation detected at Woodie's on August 24, 1996, and is liable for forty-three additional violations for selling, supplying and transporting gasoline to Woodie's and the Hess Store that exceeded the 7.4 psi standard. Getty/Aero is liable for forty-four violations of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a)(3).

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize the Administrator of EPA to assess a civil penalty of up to \$25,000 for every day of each violation and the economic benefit or savings resulting from the violation. In determining the appropriate penalty for the noticed violation, we consider the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of your business, your history of compliance with the Clean Air Act, actions taken by you to remedy the violation and to prevent recurrence of further violations, the effect of the penalty on your ability to continue in business and such other matters as justice may require.

We believe it is in your interest to demonstrate that

remission or compromise of the penalty amount is appropriate. However, in order to assist us in developing the appropriate penalty and settlement positions, we have prepared the enclosed Request for Information. Under the law you are required to submit this information or be subject to additional penalties and other sanctions above and beyond those assessed for the fuel violation identified in this Notice. In addition, if you do not submit this information in a timely manner, we will be forced to make assumptions with regard to the factors to consider in determining the appropriate amount of civil penalty which may not be in your interest or whether remission or compromise of the civil penalty amount is appropriate.

We encourage early settlement of such matters. The settlement process provides substantial flexibility for reducing the proposed penalty, particularly if the alleged violation is corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court.

The EPA attorney designated below has been assigned to this case. All information should be sent to the case attorney. Please contact this attorney regarding the Notice of Violation and Request for Information.

Jocelyn L. Adair, Attorney
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch (2242-A)
Air Enforcement Division
401 M Street, S.W.
Washington, D.C. 20460
Phone number: (202) 564-1011

Please let me once again emphasize that while we take our obligation to enforce these requirements seriously, we will make every effort to reach an equitable settlement in this matter.

Sincerely yours,

Bruce C. Buckheit
Bruce C. Buckheit, Director
Air Enforcement Division

Enclosure

Enclosure

REQUEST FOR INFORMATION PURSUANT TO SECTION 114 OF
CLEAN AIR ACT, 42 U.S.C. § 7414

Re: File No. AED/MSEB - 4708

Section 114(a) of the Act, 42 U.S.C. § 7414(a), provides that "the Administrator may require any person.... who is subject to any requirement of this Act ...to make such reports ... and provide such other information, as the Administrator may reasonably require." Respondent is subject to the requirements and prohibitions of the reformulated gasoline and anti-dumping requirements of section 211(k) of the Act, 42 U.S.C. § 7545(k) and thereby is also subject to the informational requirements of section 114(a) of the Act.

Pursuant to the authority contained in section 114 of the Act, 42 U.S.C. § 7414, provide the following information for the Friendly Oil Company, Aero Oil Company, and Getty Petroleum Corporation, and any subsidiaries, parents, affiliates or related parties:

1. We are assuming that Getty Petroleum Corporations, Aero Oil Companys, and Friendly Oil Companys income before expenses or deductions is over \$250 Million. If you do not agree, submit financial statements for the prior three fiscal years and this year current to date including but not limited to balance sheets, profit and loss statements, statements of changes in position and federal income tax returns.

2. For reformulated gasoline and conventional gasoline, documents or other evidence sufficient to demonstrate that Friendly Oil Company, Aero Oil Company and Getty Petroleum Corporation have and actually utilized a quality assurance program as set forth in 40 C.F.R. § 80.79(c) for reformulated gasoline.

3. Documents which identify the number, name and address of all the retail outlet outlets, wholesale purchaser-consumer facilities, and distribution facilities to which Aero Oil Company and Getty Petroleum Corporation supplied or distributed reformulated gasoline during the period of May 1, 1996 to the present time.

4. Documents demonstrating Respondents safeguards and management oversight to prevent the selling of VOC Control Region 2 gasoline in VOC Control Region 1 reformulated gasoline areas.

5. Any and all other information indicating that remission or compromise of the civil penalty is appropriate. You may elect to provide a statement of the cause of the violation, if known, and any mitigating factors you desire to bring to our attention.

The response to this request shall be full, complete, and to the best of your knowledge. A reply which is false, misleading, or made without regard to its veracity is, in our judgment, equivalent to a refusal to submit information. In order for us to proceed expeditiously with our enforcement docket, your response must be submitted within fifteen days after the date of this letter. If you encounter difficulty in responding to this request within this time frame, please contact the case attorney identified herein. Absent a written extension of the required response date, your failure to respond by the date set forth may lead to immediate enforcement action and a lost opportunity for early settlement of this matter. EPA's enforcement options include the issuance of a compliance order by the Administrator under section 113(a) of the Act, or the filing of a civil action seeking a permanent or temporary injunction, or a civil penalty of not more than \$25,000 per day of violation, or both, under section 113(b) of the Act. Please be aware that a knowing or willful submission of false, fictitious, or fraudulent statements or representations may subject you to possible criminal liability for filing false statements.

Pursuant to EPA regulations appearing at 40 C.F.R. Part 2, you are entitled to assert a confidentiality claim covering any part of the submitted information. If you do not assert such a claim, the submitted information may be available to the public without further notice. Information subject to a business confidentiality claim may be made available to the public only to the extent set forth in the above cited regulations.